

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HEALTH

In the Matter of University Good Samaritan  
Center – Revisit Survey Date: March 31,  
2005

**RECOMMENDED DECISION**

The above matter was the subject of an informal dispute resolution meeting conducted by Administrative Law Judge Raymond R. Krause on Tuesday, June 28, 2005, beginning at 9:00 a.m., in a conference room at the University Good Samaritan Center. The meeting concluded on that date.

Marci Martinson, Unit Supervisor, Division of Facility and Provider Compliance (“DPFC”), 1645 Energy Park Drive, Suite 300, St. Paul, MN 55108-2970 represented DFPC. Susan M. Voigt, Esq., Voigt, Jensen & Klegon, LLC, 2550 University Avenue W., Suite 190, St. Paul, Minnesota 55114, represented University Good Samaritan Center (“UGSC”). Also attending the meeting were Mary Cahill and Gloria Derfus for the Department of Health. Nikki Tostenson, RN, Jill Koch, RN, Dennis Rogers, Resident #6, Allison Dahlen, LSW, Allan Dummer, psychologist, Dr. John Mielke, Medical Director and Tom Eyong, NA made comments on behalf of UGSC.

**NOTICE**

Under Minn. Stat. § 144A.10, subd.16(d)(6), this recommended decision is not binding on the Commissioner of Health. Under Department of Health Information Bulletin 04-07, the Commissioner must mail a final decision to the facility indicating whether or not the Commissioner accepts or rejects the recommended decision of the Administrative Law Judge within 10 calendar days of receipt of this recommended decision.

**FINDINGS OF FACT**

1. As a result of a pressure sore, the resident’s physician ordered on February 14, 2005 that the resident be on complete bed rest until the wound on the left gluteal fold improved.<sup>[1]</sup>

2. The resident, who appeared at the conference, stated that while he was not happy with the decision, he concurred with the need for bed rest.<sup>[2]</sup>

3. The resident stated that, as a result of the bed rest order, his mood deteriorated.<sup>[3]</sup>

4. The Licensed Social Worker (“LSW”) arranged for a psychological assessment performed by a licensed psychologist.<sup>[4]</sup> On February 24, 2005, ten days after the physician’s order, the staff psychologist performed the assessment. The period of time between the physician’s order and the assessment was normal for a non-emergency condition such as dysphoria and is shorter than the normal referral time in the community.<sup>[5]</sup>

5. The psychologist, Alan Dummer, made three recommendations intended to deal with the “moderate to severe” dysphoric mood and adjustment difficulties that he found in resident #6. The recommendations were to: 1) bring the resident out of his room on his bed for activities such as bingo; 2) bring in restaurant food on occasion; and 3) provide visual data on his wound and its progress.<sup>[6]</sup>

6. Mr. Dummer communicated his recommendations orally to the nurse manager shortly after the assessment.<sup>[7]</sup> The written version of the recommendations was received by UGSC on March 30, 2005.

7. The Form 2567 filled out by the surveyor states that “Resident #6 had gone 35 days without implementation and/or staff intervention for his activity needs as recommended by the house psychologist on 2/24/05.”

8. Prior to March 14, 2005 when the resident’s larger bed arrived, the resident was asked if he wished to be taken to bingo on his bed as per recommendation #1 of the psychologist. Resident declined the opportunity.<sup>[8]</sup> After the larger bed arrived, it was no longer possible to fit the bed through the door.

9. Beginning on March 11, 2005, when, on occasion, staff went out to eat they brought back restaurant food for resident #6 as per recommendation #2.<sup>[9]</sup>

10. On March 3, 2005 the Director photographed the pressure sore in order to provide sensory feedback to resident per recommendation #3.<sup>[10]</sup>

11. All three recommendations were acted upon before the 35 days cited in the Form 2567. The resident declined implementation of the first and out of respect for the resident’s dignity he was not made to attend activities in his bed.

12. The Form 2567 states, “Per record review, on 3/31/05, the activity participation summary reports dated 3/1/05 to 3/31/05 indicated that the activity department had approximately eight interactions that lasted less than five minutes, four activities which lasted 5-10 minutes and three documented activity involvement with no time frame...”<sup>[11]</sup>

13. The Department acknowledges that the surveyor inadvertently did not count activities listed on the second page of the activity report.<sup>[12]</sup> If properly counted, the activities were significantly more frequent and substantial than is reflected in the Form 2567.<sup>[13]</sup> One-on-one interactions were significantly increased over the situation prior to bed rest.<sup>[14]</sup>

14. The Form 2567 states, “During the afternoon observation, on 3/30/05 at 2:00 PM, resident #6 was observed to be in bed with the lights off and curtains drawn. At 4:05 PM upon entering the room, the resident was observed to be lying on his right

side facing the door with the lights off and no TV or radio on. The resident appeared sleepy and did not maintain eye contact.”<sup>[15]</sup>

15. The resident normally took afternoon naps,<sup>[16]</sup> even prior to being ordered to bed rest and could, if he chose, operate the lights, TV remote, bed adjustments and radio at will.<sup>[17]</sup>

16. The Form 2567 states “The LSW stated that she was unaware if the other members of the behavior committee knew of the statement made to the licensed psychologist by the resident, ‘that life was not worth living’.”<sup>[18]</sup>

17. Upon being informed by the ombudsman of similar statements by the resident, the Nurse Manager responded immediately to the resident’s concern about dying by visiting him to reassure him, by informing the physician who also reassured the resident and by informing the psychologist.<sup>[19]</sup>

Based upon the exhibits submitted and the arguments made and for the reasons set out in the Memorandum that follows, the Administrative Law Judge makes the following:

### **RECOMMENDED DECISION**

1. That the citation with regard to F-tag 248 is not supported by the facts and should be rescinded.

2. That the citation with regard to F-tag 250 is not supported by the facts and should be rescinded.

Dated this 8th day of July, 2005.

s/Raymond R. Krause  
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RAYMOND R. KRAUSE  
Administrative Law Judge

Reported: Tape-recorded  
(Two Tapes, No Transcript Prepared)

### **MEMORANDUM**

The deficiencies being disputed by UGSC were issued as a result of a Post Certification Revisit (“PCR”) conducted on March 31, 2005. The PCR was conducted to follow up deficiencies issued at a standard survey that exited on February 10, 2005.

In this request for Informal Dispute Resolution, UGSC challenges the March 31, 2005 revisit survey findings under Minn. Stat. § 144A.10, subd.16 and submits two F-tags for determination.<sup>[20]</sup>

## **Tag F248 – Quality of Life**

The substantiation for the deficiencies noted in the Form 2567 is largely inaccurate and misleading. Upon learning of the physician's bed rest order, the Licensed Social Worker ordered a psychological assessment of Resident #6. The assessment took place within 10 days of the physician's order. The psychologist made three recommendations. They were communicated orally to various staff members in a timely manner. The staff took action on all three recommendations within a relatively short period of time. By the time that the psychologist's written report arrived, the recommendations had been implemented or at least attempted. Second, the number and quality of the activities provided to the resident by the staff was inadvertently and significantly under-reported by the surveyor. Third, the comments in the Form 2567 regarding the conditions in the resident's room during the survey infer that the staff were keeping the resident in a darkened room without the ability to watch TV or listen to radio. This inference is clearly contradicted by the evidence. Resident #6 regularly took afternoon naps even before being confined to bed. He is quite capable of regulating the lights, TV and radio in his room. The inference is inaccurate and unfair to both the staff and to the resident.

When the inaccuracies and misleading inferences in the Form 2567 are corrected, no basis is left to support the deficiency.

## **Tag F250 – Social Services**

Most of the facts and conclusions relating to Tag F248 also apply to Tag F250. The only additional suggestion of deficiency that relates particularly to Tag F250 is found in the Department's oral statement at the conference rather than in the Form 2567. In the oral statement, the Department alleges "the care plan directed staff to provide one to one visits per his request and referrals to in-house psychologist. There was no plan for routine visits by the facility social worker to provide counseling or an opportunity to vent while the resident was adjusting to the bed rest."<sup>[21]</sup>

Contrary to this conclusory statement, Exhibit I documents that there were weekly visits by the LSW. These were not noted as a change due to the to bed rest because the visits were part of the regular routine before the physician ordered bed rest. Resident #6 supported this in his statement that the LSW and other staff were in to see him "all the time".<sup>[22]</sup>

The evidence does not substantiate the conclusions drawn from the Form 2567.

R.R.K.

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- [\[1\]](#) Exhibit F-22.
  - [\[2\]](#) Resident Tape 1.
  - [\[3\]](#) Id., Exhibit F-6.
  - [\[4\]](#) Exhibit F-28.
  - [\[5\]](#) Dummer Tape 2 at 340.
  - [\[6\]](#) Id.
  - [\[7\]](#) Dummer Tape 2 at 288; Koch Tape 1 at 604.
  - [\[8\]](#) Dahlen Tape 1 at 1164; Koch Tape 1 at 628.
  - [\[9\]](#) Exhibit E-5; Koch Tape 1 at 637.
  - [\[10\]](#) Exhibit E-5; Koch Tape 1 at 637.
  - [\[11\]](#) Exhibit E-4.
  - [\[12\]](#) MDH statement Tape #1.
  - [\[13\]](#) Tape 1 at 215.
  - [\[14\]](#) Id.
  - [\[15\]](#) Exhibit E-1.
  - [\[16\]](#) Eyong Tape 2 at 548 and 596.
  - [\[17\]](#) Dahlen Tape 1 at 1188.
  - [\[18\]](#) Exhibit H-5.
  - [\[19\]](#) Koch Tape 1 at 655 and Tape 2 at 1.
  - [\[20\]](#) UGSC's request for IIDR, dated April 26, 2005, disputed three F-tags, F248, F250, and F314. UGSC withdrew its dispute regarding F314. Therefore the two remaining F-tags for consideration are F248 and F250.
  - [\[21\]](#) MDH opening statement Tape 1.
  - [\[22\]](#) Resident #6 Tape 1 at 969.